

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

**IN RE REGIONS MORGAN KEEGAN
ERISA LITIGATION**

**MDL Docket No. 2009
Master File No. 2:08-cv-02192
Judge Samuel H. Mays, Jr.
Magistrate Judge Vescovo**

**MOTION OF ADDITIONAL INDIVIDUAL REGIONS DEFENDANTS TO
DISMISS THE CONSOLIDATED CLASS ACTION COMPLAINT WITH
PREJUDICE AND SUPPORTING MEMORANDUM OF LAW**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Local Rule 7.2, Defendants Harry Dinken, John Daniel, W. Charles Mayer, III, Ronnie Jackson, Sharon Davis, Sherry Anthony, and Martha Ingram (the "Additional Individual Regions Defendants") respectfully move for an Order dismissing the Consolidated Class Action Complaint ("Complaint") with prejudice.

The Additional Individual Regions Defendants hereby incorporate and join fully in (1) the Motion of Regions Financial Corporation, Regions Bank, and the Individual Regions Defendants¹ to Dismiss the Consolidated Amended Complaint with Prejudice, filed April 10, 2009, Docket No. 109 (the "Regions Defendants' Motion to Dismiss"), (2) the Memorandum of Law in support of the Regions Defendants' Motion to Dismiss, filed April 10, 2009, Docket No. 111, and (3) the Declaration of Thomas S. Gigot in support of the Regions Defendants' Motion to Dismiss, filed April 10, 2009, Docket No. 112. The Additional Individual Regions Defendants request that, for purposes of the Regions

¹ The "Individual Regions Defendants" for purposes of the April 10, 2009 Motion to Dismiss were: Ken Alderman, George W. Bryan, John Buchanan, Earnest W. Deavenport, Jr., David B. Edmonds, Irene Esteves, Christopher Glaub, O.B. Grayson Hall, Jr., Tim Laney, Susan W. Matlock, Claude Nielsen, C. Dowd Ritter, David Rupp, Jill Shelton, Lee K. Styslinger, III, Tom Thompson, David Turner, Barbara H. Watson, and William C. Wells, II.

Defendants' Motion to Dismiss, they be considered "Individual Regions Defendants." *See* Regions Defendants' Motion to Dismiss, Docket No. 111, at 1 n.1.

As described more fully in the Regions Defendants' Motion to Dismiss and their accompanying Memorandum of Law, Plaintiffs' 15-Count Complaint fails to state viable claims for relief for violations of fiduciary responsibility and prohibited transactions under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1104-1108. As described in the Regions Defendants' Memorandum of Law, the particular reasons for dismissal include:

- Plaintiffs' failure to allege facts sufficient to establish any ***breach*** of duty or responsibility with respect to the acts or omissions alleged in Counts I, IV, VI, IX, XI, XIII and XV (the "Principal Counts" of the Complaint);
- Plaintiffs' failure to allege facts sufficient to establish that certain of the Individual Regions Defendants served any ***fiduciary function*** – another necessary element of Plaintiffs' claims – with respect to the acts or omissions alleged in the Principal Counts of the Complaint;
- The remaining Counts of the Complaint (Counts II, III, V, VII, VIII, X, XII and XIV) all are derivative of the claims alleged in the Principal Counts of the Complaint, and necessarily fail to state viable claims because the Principal Counts on which they depend are themselves legally deficient; and
- Plaintiffs' allegations and other materials that may be considered on a Rule 12(b)(6) motion establish that the losses alleged result from investment decisions that Plaintiffs themselves made and controlled, meaning that ERISA § 404(c), 29 U.S.C. § 1104(c), shields the Defendants from any responsibility for those alleged losses.

For these reasons, the Additional Individual Regions Defendants respectfully request that this Court dismiss the Consolidated Class Action Complaint with prejudice.

DATED this 15th day of April, 2009.

Respectfully submitted by,

s/ Thomas S. Gigot

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on April 15, 2009, a true and correct copy of the foregoing document was forwarded by electronic means through the Court's ECF System to the following individuals:

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